

## Message Text

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SUBJECT: NEW FOREIGN INVESTMENT LAW

SUMMARY. THE EMBASSY HAS RECEIVED AN ADVANCE COPY OF ARGENTINA'S FOREIGN INVESTMENT LAW FROM A RELIABLE PRIVATE SOURCE. THE LAW HAS BEEN REVIEWED BY THE LEGISLATIVE ADVISORY COUNCIL (CAL) AFTER CONSIDERABLE DEBATE AND IS EXPECTED TO BE RELEASED SOON. THE CAL PROPOSED A FEW MINOR AMENDMENTS TO THE ORIGINAL DRAFT PREPARED BY MINISTER MARTINEZ DE HOZ' GROUP BUT, BY AND LARGE, THE MAJOR PROVISIONS REMAIN INTACT. HIGHLIGHTS OF THE LAW ARE AS FOLLOWS. END SUMMARY

1. A LOCAL COMPANY OF FOREIGN CAPITAL IS DEFINED AS ONE IN WHICH AT LEAST 49 PERCENT OF THE CAPITAL IS OWNED BY FOREIGNERS OR IN WHICH FOREIGNERS CONTROL THE VOTING POWER OF THE COMPANY. A LOCAL COMPANY OF NATIONAL CAPITAL IS DEFINED AS ONE IN WHICH AT LEAST 51 PERCENT OF THE CAPITAL OR VOTING DECISIONS ARE CONTROLLED BY ARGENTINES.

2. FOREIGN CAPITAL INVESTMENTS ARE NOT SPECIFICALLY EXCLUDED FROM ANY SECTOR. HOWEVER, THE LAW LISTS THE AREAS IN WHICH FOREIGN INVESTMENT REQUIRES THE PRIOR APPROVAL OF THE EXECUTIVE POWER. THESE ARE A) NATIONAL DEFENSE AND SECURITY; PUBLIC SANITATION, POSTAL, ELECTRIC, GAS, TRANSPORTATION AND TELECOMMUNICATION SERVICES; THE MEDIA; ENERGY; EDUCATION; AND ANY OTHER SECTORS DETERMINED

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BY THE EXECUTIVE POWER; B) INVESTMENTS WHICH LEAD TO DE-

NATIONALIZATION OF LOCAL FIRMS (I.E. CONVERTING A LOCAL COMPANY OF NATIONAL CAPITAL INTO A LOCAL COMPANY OF FOREIGN CAPITAL); C) INVESTMENTS IN THE FORM OF SECONDHAND EQUIPMENT, REQUIRING SPECIAL TREATMENT; EXCEEDING \$2 MILLION, OR WHEN MADE BY A FOREIGN STATE OR PUBLIC ENTITY.

3. NO PRIOR APPROVAL IS REQUIRED FOR FOREIGN INVESTMENT IN THE FORM OF REINVESTMENT OF PROFITS OR NEW INVESTMENT NOT EXCEEDING 10 PERCENT OF THE FOREIGN CAPITAL REGISTERED BY THE RECEIVING CONCERN, PROVIDED IT DOES NOT LEAD TO DENATIONALIZATION.

4. FOREIGN INVESTMENTS REQUIRING PRIOR APPROVAL MUST MAKE A POSITIVE CONTRIBUTION TO NATIONAL ECONOMIC DEVELOPMENT.

5. A REGISTER FOR FOREIGN INVESTMENT WILL BE KEPT BY THE CENTRAL BANK.

6. FOREIGN INVESTORS WILL BE PERMITTED TO TRANSFER ABROAD PROFITS AND REPATRIATE INVESTMENT EXCEPT WHEN EXECUTIVE POWER PLACES LIMITATIONS OF A GENERAL NATURE. IN THE CASE OF LIMITATIONS, PREFERENCE IS GIVEN TO INVESTMENTS REGISTERED UNDER THE LAW AS OPPOSED TO THOSE WHICH HAVE NOT BEEN REGISTERED. IN THE EVENT THAT THE RIGHT TO TRANSFER IS SUSPENDED FOR BALANCE OF PAYMENTS REASONS, THE FOREIGN INVESTOR HAS THE RIGHT TO PURCHASE WITH LOCAL CURRENCY EXTERNAL BONDS PAYING PREVAILING INTERNATIONAL INTEREST RATES.

7. FOREIGN INVESTORS MAY REPATRIATE CAPITAL AFTER THE THIRD YEAR, UNLESS THEY HAD PREVIOUSLY INDICATED THEIR INVESTMENT WOULD BE COMMITTED FOR A LONGER PERIOD. REPATRIATION OF EXISTING INVESTMENTS WILL BE SUBJECT TO DETERMINATION BY AUTHORITIES ON A CASE BY CASE BASIS.

8. A SPECIAL TAX WILL BE LEVIED ON PROFIT REMITTED ABROAD EXCEEDING 12 PERCENT OF THE FOREIGN INVESTMENT REGISTERED IN THE CENTRAL BANK. THE TAX VARIES FROM 15-25 PERCENT.

9. FOREIGN PARENT COMPANY CONTRACTS WITH LOCAL SUBSIDIARIES LIMITED OFFICIAL USE

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OR BRANCHES WILL BE CONSIDERED FOR ALL PURPOSES CONTRACTS BETWEEN INDEPENDENT COMPANIES AS LONG AS THEY CONFORM TO NORMAL MARKET PRACTICES. THE PRINCIPLE ALSO APPLIES TO INTERCOMPANY LOANS AS LONG AS THE CENTRAL BANK DOES NOT OBJECT WITHIN 30 DAYS. INTERCOMPANY TECHNOLOGY TRANSFER CONTRACTS WILL BE GOVERNED BY A SEPARATE LAW.

10. COMPLETE LAW WILL BE POUCHED AS SOON AS IT IS

OFFICIALLY RELEASED.

11. COMMENT. THE FOREIGN INVESTMENT LAW APPROVED BY THE CAL IS SEEN AS A VICTORY FOR MINISTER OF ECONOMY MARTINEZ DE HOZ. FOR SOME DAYS, THERE HAVE BEEN PERSISTENT REPORTS INDICATING THAT NATIONALISTIC ELEMENTS IN THE CAL WERE PROPOSING HIGHLY RESTRICTIVE AMENDMENTS WHICH, IF ADOPTED, WOULD EMASCULATE THE WHOLE EFFECT OF THE LAW. THESE FORCES HAVE EVIDENTLY LOST THIS FIRST ROUND. THE IMPLEMENTING REGULATIONS FOR THE LAW, HOWEVER, STILL HAVE TO BE DRAFTED AND, ACCORDING TO LOCAL BUSINESSMEN, WILL BE EVEN MORE IMPORTANT IN DETERMINING THE IMPACT OF THE LAW.

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